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DOMESTIC HORSE SLAUGHTER REGULATION AND POPULATION MANAGEMENT

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Introduction

Opponents of horse slaughter applauded in 2007 when horse slaughterhouses across the nation closed down operations.¹ Horses have played a cherished and vital role in American culture and history, from the Lone Ranger's horse "Silver" to the underdog racehorse "Seabiscuit" and the Triple Crown winning "Secretariat". Horse slaughter has long been considered by most Americans as inhumane and cruel; after all, horses have become American icons.² However, some anti-slaughter activists have begun to reconsider their positions only a few years after the domestic ban has been put in place.³ Certain experts have warned that the overall well-being of the American horse population might actually be harmed by the closing of these horse processing plants⁴, and would result in unintended negative consequences such as neglect and abandonment of horses across the country.⁵

This paper aims to promote the practice of horse slaughter as a "humane, economically viable disposal option for unwanted or dangerous horses under careful federal regulation"⁶, rather than as a reprehensible end to a much-loved animal. Furthermore, this paper also aims to explain the need for a comprehensive system that addresses the domestic horse population through state mandated and regulated restrictive breeding practices as a means of limiting? the problem of horse slaughter before it occurs. The second part of this paper addresses the history of the horse slaughter industry in the United States, as well as this country's role in the horse

¹ Stephanie Simon, Rethinking Horse Slaughterhouses, Wall St. J., Jan. 5, 2011, <http://online.wsj.com/article/SB10001424052748703808704576062064022541>.

² Laura Jane Durfee, Anti-Horse Slaughter Legislation: Bad for Horses, Bad for Society, 84 Ind. L.J. 353 (2009).

³ Simon, *supra* note 1.

⁴ Jennifer O'Brien & Randall Szabo, 2009 Legislative Review, 16 Animal L. 371, 389 (2009-2010).

⁵ Hallie S. Ambriz, The American Horse Slaughter Prevention Act, 14 San Joaquin Agric. L. Rev. 143, 157 (2004).

⁶ Laura Jane Durfee, Anti-Horse Slaughter Legislation: Bad for Horses, Bad for Society, 84 Ind. L.J. 353 (2009).

slaughter industry as a whole. The third part of this paper discusses the horse slaughter process and the main complaints and objections raised by anti-slaughter advocates. The fourth part of this paper lays out the process of horse transportation and the means by which the slaughter industry procures such animals for processing. The fifth part of this paper examines the existing federal and state legislative frameworks that the horse slaughter industry operates within, while the sixth part of this paper analyzes the effects the domestic horse slaughter ban have posed on the welfare of the American horse population. The seventh, and final, part of this paper proposes solutions regarding revised regulation on horse slaughterhouses, as well as conclusions about the issue of horse slaughter as an industry. Good

History of the Horse Slaughter Industry in the United States

In 2006, the United States was home to over nine million horses and was the fifth- largest exporter of horse meat.⁷ In that year alone, approximately twenty-six million pounds of meat were exported, amounting to millions of dollars in trade.⁸ In spite of such strong numbers in 2006, the number of horses slaughtered in the United States had actually been on the decline over the past several decades.⁹ The decline of the U.S. horse slaughter industry can be evidenced by the number of processing plants running across the country.¹⁰ In the 1950's, there were over thirty horse processing plants operating in the United States.¹¹ By the 1980's, the number had

⁷ Bradley J. Sayles, *The Decline of Edible Equine: A Comment on Cavel International Inc. v. Madigan*, 2 Ky. J. Equine, Agric., & Nat. Resources L. 103, 103 (2009-10).

⁸ Id.

⁹ Ambriz, *supra* note 5, at 144.

¹⁰ Durfee, *supra* note 6, at 364.

¹¹ Id.

fallen to only fifteen horse processing plants operating in the country.¹² In 1999, there were only four horse processing facilities left¹³; and by 2006, only three facilities remained in operation.¹⁴

Despite the decline in numbers, the overall U.S. horse slaughter industry still carries with it a large economic footprint. About 460,000 Americans have jobs related to or working in the equine industry.¹⁵ Such jobs and the animals involved work to create substantial amounts of revenue, amounting to approximately \$39 billion in “direct economic activity.”¹⁶ Furthermore, this amount of “direct economic activity” totals over \$100 billion when spending for industry supply and employees is taken into consideration.¹⁷ Prior to the 2007 ban, domestic horse slaughter played a significant role in the equine industry.¹⁸

In 2006, just one year prior to the ban on horse slaughter taking effect, U.S.-based horse processing facilities exported \$65 million worth of horse meat.¹⁹ In that year, three horse processing plants were in operation – two plants in Texas and one plant in Illinois.²⁰ These horse processing facilities served as a source of employment for many families, while also producing millions in taxable revenue.²¹ The two horse processing facilities in Texas employed approximately one hundred and forty workers combined²², while the Illinois facility employed more than sixty workers.²³ In total, it is estimated that the economic impact of the domestic

¹² Id.

¹³ Id.

¹⁴ Id. at 356.

¹⁵ Durfee, *supra* note 6, at 356.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Tadlock Cowan, Cong Research Serv., RS21842, Horse Slaughter Prevention Bills and Issues (2011). <http://www.nationalaglawcenter.org/assets/crs/RS21842.pdf>

²⁰ O'Brien & Szabo, *supra* note 12, at 388; Sayles, *supra* note 11, at 106; Ambriz, *supra* note 11, at 147.

²¹ Durfee, *supra* note 6, at 356.

²² Ambriz, *supra* note 5, at 147.

²³ Bradley J. Sayles, The Decline of Edible Equine: A Comment on *Cavel International Inc. v. Madigan*, 2 Ky. J. Equine, Agric., & Nat. Resources L. 103, 103 (2009-10).

horse slaughter ban is between \$152 million to \$222 million annually.²⁴ Some experts argue that domestic horse slaughter not only provided economic revenue, but also served as an effective counter-measure to the overproduction of horses in the country.²⁵ The three horse-processing plants handled approximately 100,000 horses annually, producing revenue from horse meat exports.²⁶ Moreover, these plants afforded a “humane, economically viable disposal option for unwanted or dangerous horses under careful federal regulation.”²⁷ Proponents of this stance also argue that the horses slaughtered in the U.S. were largely? products of unplanned overproduction and misguided horse breeding, bred without a plan for eventual disposal.

Anti-slaughter advocates, however, argue that horses are normally never bred for their meat, but rather for “some other purpose.”²⁸ In fact, approximately one-third of all horses slaughtered in the United States are former racehorses.²⁹ Nearly thirty-five thousand horses are bred annually in the U.S. for horse racing.³⁰ Often twhen these horses fail to win races or become too old to race, many of them end up being sold for slaughter.³¹ Many racetracks, including one in New Jersey, have “meat men” who visit each week to buy horses that prove unfit for racing.³²

Domestic horse slaughter also includes wild horses brought in for their meat.³³ The U.S. Bureau of Land Management (BLM) serves as the domestic agency charged with managing wild

²⁴ Durfee, *supra* note 6, at 368.

²⁵ *Id.* at 359.

²⁶ Kimberly May, FAQ Unwanted Horses and Horse Slaughter, American Veterinary Medical Association (Sept. 5, 2008), http://www.avma.org/issues/animal_welfare/unwanted_horses_faq_pf.asp.

²⁷ Durfee, *supra* note 6, at 359.

²⁸ Daniel Hammer, Unwanted Horses: The Limits of Protection, Friends of Animals, <http://www.friendsofanimals.org/actionline/summer-2005/unwanted-horses.html>.

²⁹ Ambriz, *supra* note 5, at 148.

³⁰ Hammer, *supra* note 28.

³¹ *Id.*

³² Ambriz, *supra* note 5, at 148.

³³ *Id.* at 149.

horses on federal land.³⁴ The BLM commonly puts its procured horses up for adoption, and many of these horses end up in horse processing facilities.³⁵ For decades, commercial slaughter of wild horses was deemed illegal pursuant to the Wild Free Roaming Horse and Burrow Act of 1971.³⁶ This protection afforded to wild horses was terminated in 2005 when an amended Omnibus Appropriations bill required the BLM to destroy all horses ten years year or older for which private adoption proved unsuccessful.³⁷ Furthermore, other horses destined for slaughterhouses included those with behavioral problems, animals whose owners simply lost interest, and animals whose owners could not afford to maintain them any longer.³⁸

As the trend of overbreeding continues, many horses face the grim reality of ending up in slaughterhouses.³⁹ In light of the domestic horse slaughter ban, many of these doomed horses are instead shipped outside of the United States for processing; the majority of these exported horses are transported to Canada and Mexico.⁴⁰ According to USDA estimates, approximately 26,000 horses were exported to Canada while about 19,000 horses were shipped to Mexico for slaughter in 2006 prior to the enactment of the domestic ban on horse slaughter.⁴¹ In 2007, the year after the ban was enacted and all three U.S.-based processing facilities shut down, those numbers spiked to 47,000 horses sent to Canada and 45,000 horses exported to Mexico, the vast majority for slaughter.⁴² This trend continued through 2010, in which a total of approximately 138,000 horses were shipped to Canada and to Mexico for processing.⁴³

³⁴ Robert Gehrke, *Horse Adoption Program Challenged*, Wash. Post, December 26, 2001, at A29.

³⁵ *Id.*

³⁶ 16 U.S.C. § 1331 (2006).

³⁷ *Id.* at § 1333(e)(1); O'Brien & Szabo, *supra* note 4, at 385.

³⁸ Ambriz, *supra* note 11, at 149.

³⁹ Durfee, *supra* note 9, at 357-58.

⁴⁰ O'Brien & Szabo, *supra* note 4, at 389.

⁴¹ Cowan, *supra* note 19, at 6.

⁴² *Id.*

⁴³ United States Government Accountability Office, "Horse Welfare: Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter", June 2011. <http://www.gao.gov/assets/320/319926.pdf>

Although consumption of horse meat has long been frowned upon in American culture, foreign demand for the product calls for the practice of horse slaughter to continue.⁴⁴ During the last two decades of domestic horse slaughter, approximately three million horses were slaughtered and exported.⁴⁵ The majority of the processed horse meat was exported to countries such as Japan, Italy, France, Mexico, and Belgium, and other countries which consider horse meat a culinary delicacy. In these countries customers pay up to fifteen dollars a pound for the purchase of exported horse meat.⁴⁶

Although the horse slaughter industry proved to be a lucrative section of the overall U.S. equine industry, the closure of domestic processing facilities did little to curb the level of horse overproduction domestically. Domestic horse slaughter served not only as a means to produce revenue, but also as a means to keep the U.S. horse population in check. In order to protect and improve the welfare of the American horse, it is submitted that a system that focuses on the problem of overproduction of horses must be put in place to deal with the problem before it arises. Failure to provide a means of controlling the domestic horse population, coupled with the ban on domestic horse slaughter, will only compound the problem further. good

Horse Slaughter Processes

With regard to the horse slaughter industry, the term “slaughter” customarily means the “commercial slaughter of one or more horses with the intent to sell, barter, or trade the flesh for human consumption.”⁴⁷ The animal must also be “alive immediately prior to slaughter” if the

⁴⁴ Durfee, *supra* note 6, at 356-57.

⁴⁵ Ambriz, *supra* note 5, at 146.

⁴⁶ *Id.*

⁴⁷ Robert Laurence, *Cowboys and Vegetarians: The Proposed American Horse Slaughter Prevention Act*, 2003 Ark. L. Notes 103, 104 (2003).

horse meat is planned for human consumption.⁴⁸ The Human Methods of Slaughter Act (HMSA) has also been put in place to govern suitable methods of slaughter in the United States.⁴⁹ As a result of the HMSA, legislators have also discovered that humane slaughter practices provide additional advantages to the horse slaughter industry.⁵⁰ Humane horse slaughter which avoids unnecessary suffering by horses has been shown to provide safer working conditions for employees, increased efficiency in processing facilities and improved quality of horse meat.⁵¹ Pursuant to the HMSA, humane methods of slaughter include:

“In the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”⁵²

The HMSA also provides that animals may be slaughtered humanely according to the Jewish ritual requirements; under this method, an animal slaughtered “suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.”⁵³

Contentions by Anti-Slaughter Proponents [Could use advocates but not activists]

Anti-slaughter proponents argue, that despite the portrayal of horse slaughter facilities as places that are “sanitized, with workers adhering to every humane, safety, and sanitation code

⁴⁸ Sayles, *supra* note 7, at 109.

⁴⁹ Humane Methods of Livestock Slaughter, 7 U.S.C § 1901 (2006).

⁵⁰ *Id.*

⁵¹ Amy Mosel, Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production, 27 U. Dayton L. Rev. 133, 144 (2001-02).

⁵² 7 U.S.C § 1902.

⁵³ *Id.*

and regulation,” the harsh reality is that such facilities are cruel, fierce environments.⁵⁴ These anti-slaughter proponents!!! assert that because horses often feel startled and agitated, obtaining proper head restraints on startled horses are “virtually impossible”; and as a result, these horses are forced to suffer numerous strikes to the skull in an effort to incapacitate them, and remain stunned yet still conscious as their throats are slit and their bodies processed.⁵⁵ Former horse processing facility workers have described the atmosphere of the slaughterhouse floor as moving “so fast, you don’t have time to wait until a horse bleeds out. [...] Sometimes, a horse’s nose is down in the blood blowing bubbles [during skinning], and he suffocates.”⁵⁶

Following the domestic ban on horse slaughter, anti-slaughter advocates? worried that Mexican processing facilities would continue using inhumane methods of slaughter on horses.⁵⁷ These advocates contended that such Mexican processing plants use a “puntilla technique” of incapacitation, in which a horse is stabbed as many as a dozen times in order to sever the spinal cord of the animal.⁵⁸ Following this “puntilla technique” of incapacitation, the horse is then “lifted up and its throat slit.”⁵⁹ In light of such gruesome slaughter techniques, the brutality described by anti-slaughter advocates? is exactly the type which the HMSA aims to prevent.⁶⁰

Regulation of Horse Processing

Since the enactment of the HMSA, employees of the USDA are charged with the responsibility of plant inspection as well as ensuring that such facilities adhere to the methods of humane slaughter set forth in the statute.⁶¹ USDA inspectors are granted authorization to shut

⁵⁴ Ambriz, *supra* note 5, at 154.

⁵⁵ *Id.* at 153-54.

⁵⁶ *Id.* at 153.

⁵⁷ O'Brien & Szabo, *supra* note 4, at 389.

⁵⁸ Durfee, *supra* note 6, at 366.

⁵⁹ *Id.*

⁶⁰ Mosel, *supra* note 51, at 152.

⁶¹ Durfee, *supra* note 6, at 358.

down processing facilities upon evidence of inhumane animal handling.⁶² In the U.S., handlers slaughter the horses by using a “bolt” method, which consists of using a “pneumatic captive-bolt gun”⁶³ to drive a steel rod into the animal’s brain, killing the horse almost instantly.⁶⁴ The horse is then lifted up and its throat is slit so that it bleeds out.⁶⁵ Afterwards, the horse is carved into meat for processing. When performed correctly, this system has led to improved quality of horse meat, increased facility efficiency, and a decline in unnecessary animal suffering.⁶⁶

Following the closure of horse processing facilities in the U.S., thousands of horses are now sent to Canada and Mexico for slaughter and processing. Anti-slaughter advocates worry that inhumane methods of slaughter will result from the exporting of live horses for slaughter; these advocates contend that if slaughter must occur, horse processing should be handled domestically because it guarantees the use of the humane “bolt” method performed under veterinary supervision subject to USDA administration.⁶⁷ Once these horses leave U.S. borders, they become subject to inhumane slaughter tactics.⁶⁸

However, such claims of animal abuse and maltreatment in foreign countries can be greatly embellished. In 2009, a committee sent by the American Association of Equine Practitioners journeyed to two horse processing facilities in Mexico.⁶⁹ The first plant visited, one which processed approximately one thousand horses per week, operated under European Union and Mexican slaughter provisions and regulations.⁷⁰ This processing plant operated under veterinarian supervision for animal inspection, and handled the horses humanely by corralling

⁶² 21 U.S.C § 603(b) (2006).

⁶³ Ambriz, *supra* note 5, at 155.

⁶⁴ O'Brien & Szabo, *supra* note 4, at 389.

⁶⁵ Ambriz, *supra* note 5, at 153.

⁶⁶ Mosel, *supra* note 51, at 144.

⁶⁷ Ambriz, *supra* note 5, at 151.

⁶⁸ *Id.*

⁶⁹ Malinda Osborne, Horse Slaughter Conditions in Mexico, *Journal of the American Veterinary Medical Association* (Mar. 1, 2009), <https://www.avma.org/News/JAVMANews/Pages/090301h.aspx>

the animals with flags instead of whips.⁷¹ The committee also described the restraint system used as one with a “hydraulic bar [that] pushes the horse forward while a wedge-shaped stainless steel device comes under the chin and cradles the head. This limits the horse's movement ... which better facilitates placement of the captive device.”⁷² When the animal is secured and restrained properly, the horse is then incapacitated using the “bolt” technique.⁷³

The second processing facility toured by the committee was one that handled and processed only Mexican horses.⁷⁴ Although handling only 280 horses a week with no onsite veterinarian, the plant did have a licensed veterinarian inspect the plant on a weekly basis.⁷⁵ This second processing plant also employed the “bolt” technique for animal incapacitation, but without the use of the advanced restraint system used in the first Mexican plant.⁷⁶ The American committee determined that the animals in both Mexican facilities were handled and processed efficiently and humanely.⁷⁷

In summation, it appears that anti-slaughter advocates are accurate in contending that animal slaughter *can be* an inhumane and cruel process. Nevertheless, strict adherence to regulatory provisions can ensure that the process be as humane as possible. Although tales of animal maltreatment and mishandling in foreign countries may be overinflated, critics of animal slaughter would still prefer to have it happen domestically, under USDA regulation and veterinary inspection, to ensure that such regulatory provisions are followed.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

Procurement and Transport of Horses

In 2010, approximately 138,000 horses were sent across the border to Mexico and Canada for slaughter and processing.⁷⁸ In procuring animals for slaughter, processing plants buy horse stock from “killer buyer,s” people who travel across the country purchasing and selling horses.⁷⁹

Killer buyers work as contractors or independent agents who purchase horses from sources such as private dealers, racetracks, and horse auctions, and then sell the animals to slaughterhouses.⁸⁰ Purchased horses are usually bought for thirty to forty cents per pound, and weigh an average of one thousand pounds.⁸¹

Once purchased, the animals are transported via double-decker trailers.⁸²; These trailers have often been designed to transport horses of different species, and commonly fail to provide enough room to accommodate species with longer necks.⁸³ Consequently, these horses are transported thousands of miles with bent necks while placed in distressing positions; because of this, many horses arrive injured at their destinations.⁸⁴ A USDA study on horse transportation methods resulted in the following:

42% of horses had been transported via double-deck trailers; 9% of horses were indent on right side too!! transported on single-deck trailers; and 49% of horses were transported on gooseneck trailers. Approximately 73% of severe welfare problems did not occur as a

⁷⁸ United States Government Accountability Office, “Horse Welfare: Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter”, June 2011. <http://www.gao.gov/assets/320/319926.pdf>

⁷⁹ Ambriz, supra note 5, at 150.

⁸⁰ Hammer, supra note 28.

⁸¹ Ambriz, supra note 5, at 146.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

result of transport, but were caused by the animal's previous owner: skinny, weak, non-ambulatory animals with injuries such as bowed leg tendons.⁸⁵

The study also found that injuries sustained by horses transported to slaughter were largely a result of fighting amongst animals during transport, prior owner's neglect, and design flaws in the transport trailers.⁸⁶ In efforts to reduce the number of injuries sustained by these animals, Congress proposed the Commercial Transportation of Equine for Slaughter regulation to be included in the Federal Agriculture Improvement Reform Act (FAIRA) of 1996;⁸⁷ however, the provision did not take effect until 2007.⁸⁸ Under FAIRA, the USDA was tasked with drafting regulations regarding food, water, and rest periods provided to horses during transport to slaughter.⁸⁹

The resulting USDA regulations allowed for transport of horses for up to twenty-eight hours without food, water, or rest periods, while prohibiting further use of double-decker trailers for transport of horses to slaughter.⁹⁰ Furthermore, these regulations were to be enforced by USDA-certified veterinarians through on-site inspections during arrival of shipments of horses to the processing facilities.⁹¹ However, when such regulations went into effect in 2007, all three horse processing facilities in the country shut down operations as a result of the domestic ban on horse slaughter.⁹² Consequently, horses were shipped to Canada and Mexico for slaughter, thus circumventing any major means of regulation on horse transport, since the horses would never arrive at a U.S.-based processing facility.⁹³ Thus the animals fall victim to maltreatment as they

⁸⁵ Ambriz, *supra* note 5, at 152.

⁸⁶ *Id.*

⁸⁷ Federal Agricultural Improvement and Reform Act of 1996, Pub. L. No. 104-127, § 901 (1996).

⁸⁸ Ambriz, *supra* note 5, at 144.

⁸⁹ *Id.* at 151.

⁹⁰ Commercial Transportation of Equines for Slaughter, 9 C.F.R. § 88.3(b) (2011).

⁹¹ Ambriz, *supra* note 5, at 151.

⁹² *Id.* at 144.

⁹³ O'Brien & Szabo, *supra* note 4, at 383.

are “crowded into trailers, with no access to food or water, and have difficulty keeping their balance.”⁹⁴

The grim conditions horses face during transport to out-of-country? slaughter houses? are a significant part of the overall maltreatment that these animals experience. The lack of horse processing facilities operating within the U.S. allows for transporters to avoid adhering to transport regulations altogether. Rather than relying on an assortment of differing state laws, federal action would best address this issue by providing uniform standards of animal handling and transportation. Moreover, increased federal regulation would be the most effective means to address this issue because it spreads across state lines and even across international borders. For example, the USDA could station inspection staff at international trucking gateways to inspect animals for serious injuries and issue severe fines for drivers, dealers or owners who violate humane transportation regulations.

Legislation Governing the Horse Slaughter Industry

The legal framework of both federal and state laws currently in place greatly affects the issue of domestic horse slaughter. Laws currently in effect as well as proposed laws concerning domestic horse slaughter shall be examined in the following sections.

Current Federal Legislation of Horse Slaughter

Numerous federal regulations have been put in place to govern the horse slaughter industry. First, the Federal Meat Inspection Act of 1906 (FMIA) regulates meats sold for human

⁹⁴ Id.

consumption by requiring USDA inspection of all meat products,⁹⁵ the costs for which must be covered with appropriated funds.⁹⁶ Pursuant to the FMIA, horses were inspected immediately upon arrival at processing facilities; any horses exhibiting signs of infection or disease would be further inspected and slaughtered separately from other animals.⁹⁷

Following the inspection pursuant to the FMIA, horses slaughtered for human consumption are then subject to the Humane Methods of Slaughter Act (HMSA).⁹⁸ Under the HMSA, the animal must first be rendered unconscious, and then slaughtered according to one of two methods: either according to Kosher or other religious handling practices, or by rendering the animal “insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective.”⁹⁹ In order to ensure compliance with the HMSA, inspections of slaughter methods must be carried out by USDA employees who have the authority to close the processing plant upon evidence of inhumane treatment of improper slaughter.¹⁰⁰

Another Congressional law, the Wild Free Roaming Horse and Burro Act of 1971, was enacted to protect wild horses and burros on federal land. This Act effectively criminalized any commercial sale and/or slaughter of these animals.¹⁰¹ Furthermore, the United States Bureau of Land Management (BLM) was assigned the duty of protecting these wild horses and burros by restricting the federal sale of them.¹⁰² The BLM effectively provided a safeguard for the wild animals until a 2005 amendment to the Omnibus Appropriations Bill removed the restriction of the sale of wild horses for slaughter. This amendment mandated that the federal government

⁹⁵ 21 U.S.C. § 601.

⁹⁶ Id. at §§601, 603.

⁹⁷ Id. at §603(a).

⁹⁸ 7 U.S.C § 1901.

⁹⁹ Id. at §1902.

¹⁰⁰ 21 U.S.C. § 603(b).

¹⁰¹ 16 U.S.C. § 1331.

¹⁰² O'Brien & Szabo, *supra* note 4, at 385.

sell to slaughterhouses horses more than 10 years of age or horses which have been offered unsuccessfully for adoption at least three times.¹⁰³

In order to counter the amendment to the Omnibus Appropriations Bill, legislators have also amended the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006.¹⁰⁴ The amendment precluded the USDA from providing funds for inspection of horse processing facilities.¹⁰⁵ Without these inspections, the FMIA has thus effectively restricted horse processing facilities from selling horse meat for human consumption, since such inspections are a prerequisite for the sale of horse meat for human consumption.¹⁰⁶

In response,, all three domestic horse processing facilities petitioned the USDA in 2006 for voluntary inspection of plants to be funded by user fees.¹⁰⁷ In turn, the USDA set forth a rule amendment to regulations on the slaughter of exotic animal species to allow for the inclusion of horses.¹⁰⁸ This rule amendment applied to FMIA guideline, and mandated that inspections of meat pertaining to ante-mortem, (i.e., before) slaughter,of horses would be paid for by the processing plant.¹⁰⁹;However, post-mortem, or after slaughter, inspections, could be paid for through the use of USDA appropriations funds.¹¹⁰ This USDA ruling permitted domestic horse processing plants to continue operating through 2006.

Following the closure of domestic horse processing facilities in 2007, subsequent appropriations bills continued to withhold appropriation of funds for horse inspections, including

¹⁰³ 16 U.S.C. § 1333(e)(1).

¹⁰⁴ Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006, Pub. L. No. 109-97, 119 Stat. 2120 (2006).

¹⁰⁵ Mary W. Craig, Just Say Neigh: A Call for Federal Regulation of By-Product Disposal by the Equine Industry, 12 Animal L. 193, 198-99 (2005-06).

¹⁰⁶ Exotic Animals and Horses; Voluntary Inspection, 9 C.F.R. § 352.3 (2006)

¹⁰⁷ Cowan, *supra* note 19.

¹⁰⁸ Ante-Mortem Inspection of Horses, 71 Fed. Reg. at 6338.

¹⁰⁹ *Id.*

the Omnibus Appropriations Act of 2009 and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010.¹¹¹ This lack of funding for horse meat inspections meant that no horses could be processed domestically for sale or human consumption. However, the November 2011 Omnibus Appropriations bill was passed without listing any further prohibition on the inspection of horse meat. Prior to the November 2011 bill, federal laws in place thwarted efforts of the commercial sale of domestic horse meat by prohibiting the necessary inspection funds needed prior to sale for human consumption. Nevertheless, the 2012 Agricultural Appropriations bill, signed into law by president Obama in November 2011 as H.R. 2112, has lifted the de facto ban on domestic horse slaughter and the commercial sale of horse meat by failing to mention any continued prohibition of funds for inspection of horse meat for human consumption.¹¹²

Proposed Federal Legislation of Horse Slaughter

At present, there exist three proposed pieces of legislation pertaining to the equine and horse slaughter industries. The first is the Horse Transportation Safety Act of 2011 (HTSA).¹¹³ The HTSA was first introduced and sponsored by Representative Mark Kirk of Illinois, following an accident in which a double-decker trailer carrying fifty-nine horses overturned, killing eighteen of the horses.¹¹⁴ The HTSA would??? prohibit all interstate transport of horses on multi-level carts, trailers, or carriages, and also levy a fine on violators ranging from \$100 to

¹¹⁰ Id.

¹¹¹ Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, Division A § 739 (2009); Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010, Pub. L. No. 111-80 (2009).

¹¹² H.R. 2112: Consolidated and Further Continuing Appropriations Act 2012, 112th Cong. (2011)

¹¹³ S. 1281: Horse Transportation Safety Act of 2011, 112th Cong. (2011)

¹¹⁴ O'Brien & Szabo, *supra* note 4, at 381.

\$500 per horse transported on multi-level carriage.¹¹⁵ The HTSA was actually first introduced a few years prior, as the Horse Transportation Safety Act of 2009, and was referred to committee. But it ultimately never became law.¹¹⁶ Hence the bill was re-introduced in its current form.

The second piece of proposed regulation is the American Horse Slaughter Prevention Act of 2011 (AHSPA).¹¹⁷ The AHSPA was introduced by Representative Dan Burton of Indiana, and would amend the existing Horse Protection Act to “prohibit the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of horses and other equines to be slaughtered for human consumption.”¹¹⁸ This proposed legislation would also authorize the Secretary of Agriculture to detain for “examination, testing or the taking of evidence any horse ... that the Secretary has probable cause to believe is being shipped, ... or transported” for slaughter.¹¹⁹ Should this bill become law, it would reinstate a ban on domestic horse slaughter that had been recently lifted in late 2011, and even make it a crime to ship or transport horses to Canada or Mexico for slaughter.^{fn} As of December 2012, this bill still remains to be reported by what? Committee, and thus seems unlikely the bill will be enacted in the current Congressional session.

The third piece of proposed federal legislation regarding the horse slaughter industry is the Resolution Honoring Wild Horses and Burros.¹²⁰ This resolution was introduced by Congressman Raul Grijalva of Arizona in 2011, and aims to “honor wild horses and burros as

¹¹⁵ S. 1281

¹¹⁶ H.R. 305, 111th Cong. (2nd Sess. 2009).

¹¹⁷ H.R. 2966: American Horse Slaughter Prevention Act of 2011, 112th Cong. (2011).

¹¹⁸ *Id.*

¹¹⁹ *Id.* at Section 2.

¹²⁰ H. Res. 284: Resolution Honoring Wild Horses and Burros as Important to Our National Heritage, 112th Cong. (2011).

living symbols of the Western development area.”¹²¹ According to early 2011 Bureau of Land Management data, the current free-roaming population of wild horses has been increasing in herd size at a rate of approximately 20% per year.¹²² In order to address this issue, this Resolution would call for increased socially responsible methods of environmental conservation and humane animal handling of such wild horses in order to preserve the enduring legacy of an American public icon, the wild horse.¹²³

While all three pieces of proposed legislation seek to address existing issues within the horse slaughter industry, including humane handling and animal transportation, these proposed regulations fail to address the key issue – overpopulation and overproduction of horses in the country. Without any uniform means of controlling the horse population, the equine industry will continue to face the dilemma of either allowing domestic horse slaughter to reduce the horse population, or allowing horses to be inhumanely handled and haphazardly shipped across borders for slaughter. GOOD

State Legislation of Horse Slaughter

Although federal legislation has been put in place to prohibit domestic horse slaughter over the past decades, state laws have ultimately been the mechanisms used to close horse processing plants across the country.¹²⁴ In 2006, horse processing facilities operated in only two states, with two plants in Texas and one in Illinois, prior to closure of all three plants the following year.¹²⁵

¹²¹ American Veterinary Medical Association, Federal Issue Brief: H. Res 284.
<https://www.avma.org/Advocacy/National/Congress/Pages/HRes284-Resolution-Honoring-Wild-Horses-and-Burros.aspx>

¹²² Id.

¹²³ Id.

¹²⁴ Cowan, *supra* note 19.

¹²⁵ O'Brien & Szabo, *supra* note 4, at 388.

The processing facility in Illinois, Cavel International Inc., was located in Dekalb, Illinois, and had been in business for over twenty years.¹²⁶ In 2007 alone, the plant had over sixty employees, slaughtering approximately 40,000 – 60,000 horses.¹²⁷ In May 2007, the Illinois Horse Meat Act was amended to criminalize horse slaughter for human consumption.¹²⁸ The amended Act made it unlawful for any person in the state either “to slaughter a horse if that person knows or should know that any of the horse meat will be used for human consumption,”¹²⁹ or “to import into or export from this State, or to sell, buy, give away, hold, or accept any horse meat if that person knows or should know that the horse meat will be used for human consumption.”¹³⁰

In defence of its facility?, Cavel claimed that the amendment to the Act violated both the Federal Meat Inspection Act (FMIA) and the Commerce Clause. - the provision in Article I, section 8, of the federal Constitution that in terms merely empowers Congress to regulate interstate and foreign commerce but that has been interpreted to limit the power of states to regulate interstate and foreign commerce even in the absence of federal legislation inconsistent with the state regulation.¹³¹ [should be in footnote} Cavel’s first contention, that the FMIA preempted the amended Illinois statute, was rejected by the court.¹³² The court held that the Federal Meat Inspection Act’s preemption clause, which proscribes states’ promulgation of requirements in addition to or different from federal requirements regarding “premises, facilities and operations” at establishments subject to inspection under the Act, did not preempt the Illinois statute making it unlawful to slaughter horses for human consumption, or to import or export

¹²⁶ Sayles, *supra* note 7, at 106.

¹²⁷ *Id.*

¹²⁸ Illinois Horse Meat Act, 225 Ill. Comp Stat. 635 (2007).

¹²⁹ *Id.* at § 635/1.5(a).

¹³⁰ *Id.* at § 635/1.5(b).

¹³¹ *Cavel Int’l, Inc. v. Madigan*, 500 F.3d 551, 553 (7th Cir. 2007) .

¹³² *Id.* at 553-554.

horse meat for human consumption.¹³³ The court held that the FMIA regulated production of horse meat for human consumption as long as such production occurred, but did not mandate such production.¹³⁴ Not exactly clear!

The court also rejected Cavel's second argument: that the Illinois statute violated the Commerce Clause.¹³⁵ The court held that when a state statute challenged on Commerce Clause grounds regulates evenhandedly to effectuate legitimate local public interest, and its effects on interstate commerce are only incidental, the state statute will be upheld unless the burden imposed on such commerce is clearly excessive in relation to putative local benefits, which it was not in this particular case.¹³⁶ [you have many long sentences—with multiple clauses-- which you be broken up if possible for clarity and easier reading] Despite Cavel's best efforts for injunctive relief, the Seventh Circuit eventually held that the Illinois Horse Meat Act neither violated the Commerce Clause, nor was the Act preempted by the Federal Meat Inspection Act.¹³⁷ This decision ultimately led to the shutdown of Cavel International, forcing it out of business.

The law prohibiting horse slaughter for human consumption in Texas was passed in 1949, but was not finally enforced until the mid-2000's. According to the Texas Agricultural Code, a person "commits an offense if: (1) the person sells, offers for sale, or exhibits for sale horsemeat as food for human consumption; or (2) the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption."¹³⁸

¹³³ Id.

¹³⁴ Id.

¹³⁵ Id. at 554-556.

¹³⁶ Id.

¹³⁷ Id. at 558-559.

¹³⁸ Tex. Agric. Code Ann. § 149.002.

In 2007, the two horse processing plants challenged the validity of this statute.¹³⁹ The Court of Appeals for the Fifth Circuit upheld the Texas statute against horse slaughter for human consumption finding that the state statute was neither preempted by federal legislation, specifically the FMIA, nor did it violate the Dormant Commerce Clause.¹⁴⁰ First, the court rejected the petitioners' claim that the FMIA expressly preempted Texas' prohibition on horse meat for human consumption.¹⁴¹ The court held that although the FMIA's preemption clause expressly limits states in their ability to govern meat inspection and labeling requirements, it in no way limits states in their ability to regulate what types of meat may be sold for human consumption in the first place.¹⁴² The court also stated that the FMIA "does not expressly dispose states of the ability to define what meats may be available for slaughter and human consumption", and as such, the "Texas statute has not been expressly preempted."¹⁴³

Additionally, the court rejected petitioners' second contention, that the Texas statute violated the Dormant Commerce Clause.¹⁴⁴ The court found that the Texas statute prohibiting selling, possessing, or transferring horsemeat for human consumption did not violate the Dormant Commerce Clause because the Texas statute treated both intrastate and interstate trade of horsemeat equally by way of a blanket prohibition. Thus in no way could the prohibition be considered economic protectionism as the statute did not favor in-state actors over out-of-state actors, as evidenced by the fact that the suit was instituted by two Texas slaughterhouses.¹⁴⁵ The court also agreed that no alternative measures could advance Texas's interests in protecting

¹³⁹ *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326, 329 (5th Cir. 2007).

¹⁴⁰ *Id.* at 329.

¹⁴¹ *Id.* at 333.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 335. [Should explain what the dormant commerce clause involves]

¹⁴⁵ *Id.*

horses as effectively as upholding the Texas statute.¹⁴⁶ Similar to Cavel International in Illinois, this decision soon led to the shutdown of both Texas horse processing facilities.

As opposed to the state laws in both Texas and Illinois prohibiting horse slaughter, several other states have proposed bills calling for *increased* domestic horse slaughter within their respective borders.¹⁴⁷ Proponents of these bills argue that a ban on domestic horse slaughter as? resulted in increased numbers of neglected and abandoned horses.¹⁴⁸ These proponents also maintain that issues of horse slaughter would be best dealt with through systems of regulation and inspection, rather than an outright prohibition on domestic horse slaughter.¹⁴⁹

Several of these proposed bills have gone on to become state laws in several states. Wyoming, for example, has enacted a law allowing state-approved meat processing facilities to sell horse meat to state institutions.¹⁵⁰ Moreover, state legislatures in Missouri, South Dakota, and Arkansas have approved resolutions calling for Congress to support and enable domestic horse slaughter and processing.¹⁵¹

Nonetheless, without federal funding for inspection of horse meat, the product cannot be sold in interstate commerce because of the FMIA mandate requiring USDA inspection of meat prior to sale for human consumption.¹⁵² Many state legislatures have thus begun taking steps? What can they do?? to reinstate USDA funding for such inspections. Some states are also proposing bills that aim to establish state meat inspection programs, thus allowing for the opening of horse processing plants in those states.¹⁵³

¹⁴⁶ Id. at 336-337.

¹⁴⁷ O'Brien & Szabo, *supra* note 4, at 389, 392-94.

¹⁴⁸ Id.

¹⁴⁹ O'Brien & Szabo, *supra* note 4, at 389.

¹⁵⁰ Simon, *supra* note 1.

¹⁵¹ S.D. Sen. Con. Res. 2, 84th Leg. (2009).

¹⁵² 21 U.S.C. § 601.

¹⁵³ Neb. L.B. 305, 102nd Leg. (2011).

The influx of proposed state bills calling for an increase in horse processing complicates the landscape of the equine industry. Although proponents of these proposed state laws contend that they would provide a counter-measure to the overproduction of horses, it appears that allowing for state-regulated horse slaughter would create confusing and differing state regulations with regard to humane animal treatment and slaughter methods. Furthermore, instead of horses being transported across national borders, many animals would merely end up being transported across state borders with varying degrees of state regulation. In order to address these concerns, federal provisions and regulations should be enacted to provide a uniform system in addressing horse overproduction, as well as horse transport.

Effects of the Ban on Domestic Horse Slaughter

Prior to the shutdown of domestic horse processing facilities in the United States, proponents of horse slaughter warned that without an option for horse slaughter the general welfare and conditions of horses would decline.¹⁵⁴ Regrettably, this has held true, as instances of equine abuse and neglect have increased since the domestic processing facilities have been closed.¹⁵⁵ One expert estimates that approximately 120,000 horses have been abandoned following the domestic ban on horse slaughter.¹⁵⁶ According to the Equine Protection for the Humane Society of the United States, rescue institutions are taking in more and more unwanted horses and local officials are continuing to confiscate large numbers of horses.¹⁵⁷ Furthermore,

¹⁵⁴ Ambriz, *supra* note 5, at 157.

¹⁵⁵ Jenny Jarvie, Drought is a hard time for horses, L.A. Times, Jan. 13, 2008, <http://www.latimes.com/news/nationworld/nation/la-na-horses13jan13, 0,6298728.story?coll=la-home-nation>.

¹⁵⁶ Durfee, *supra* note 6, at 365.

¹⁵⁷ Jarvie, *supra* note 140.

as more animal rescue institutions are becoming full, more horses are being purchased from “killer buyers” or simply left for dead due to lack of proper resources to care for the animals.¹⁵⁸

The recent economic recession has also intensified problems for abandoned horses. Approximately 80% of abandoned horses in the country were previously owned by people who eventually? could n longert afford to care for the animals.¹⁵⁹ This trend has increased in recent years, as each year more horses end up being surrendered while the cost of properly maintaining an animal has risen to approximately \$1,800 per year.¹⁶⁰

As the recession progresses, the number of abandoned horses may continue to increase without a proper means of legislative regulation in place to manage horse overproduction. Despite increased numbers of horse neglect and abandonment, the U.S. has not seen the impact of the ban on domestic horse slaughter.¹⁶¹ Large numbers of neglected and abandoned horses are simply shipped to Mexico and Canada, thus providing a temporary solution to the issue. The Unites States’ failure to provide a means of dealing with overproduction of horses will inevitably compound the problem for horses facing slaughter, as well as diminish the general welfare of horses in the country.

Proposed Solutions

A federal ban on domestic horse slaughter should provide a uniform system of regulation in prohibiting slaughter of horses for human consumption. Furthermore, a comprehensive system of managing horse population and production should be enacted by all states in order to

¹⁵⁸ Id.

¹⁵⁹ Debbie Arrington, 170,000 cast-off horses leave U.S. shelters overcapacity, ScrippsNews (Sept. 16, 2010), <http://www.scrippsnews.com/content/170000-cast-horses-leave-us-shelters-overcapacity>.

¹⁶⁰ Id.

¹⁶¹ Durfee, *supra* note 6, at 365.

effectively regulate each state's horse population. Additionally, restrictive breeding practices should be enacted and enforced by state-imposed regulations prohibiting breeders or farmers from producing more horses than they can properly care for and financially afford. For example, horse breeders and farmers may be ordered to adhere to strict timetables for horse breeding seasons, affording animals only one or two months per year to breed. This would help ensure that the reduced number of young foals (baby horses) produced are afforded adequate feed resources while being able to prevent neglect. Fn? Where did you get this recommendation?

Another restrictive breeding method would be to mandate that breeders spay or neuter horses after a specified number of breeding seasons. This method would also work to limit overproduction of animals. Sanctions could also be imposed on breeders or famers for violations of such restrictive breeding practices to ensure that they better adhere to proper practices. Alternatively, the federal legislature could restore sufficient appropriations funding to provide for facility inspections within the states, should they choose to open horse processing facilities. The welfare of the iconic American horse will face the continued jeopardy of horse slaughter without a proper, all-encompassing system addressing issues of horse population management.

Conclusion

If a ban on domestic horse slaughter is chosen to improve the welfare of horses, it should be a federal ban together with a broad program to manage the population of horses. This should be accomplished through contraceptive procedures such as spaying and neutering of animals and restricted breeding seasons imposed for breeders and farmers. However, although anti-slaughter advocates may disagree, domestic horse slaughter performed under proper USDA supervision and inspection along with enforcement of humane methods of animal transport and slaughter

may provide for an improvement for the overall welfare of the American horse. Without a widespread horse management program in place or a properly regulated domestic horse slaughter industry agreed upon, the quandary of the American horse will likely continue.

Well-written, good topic

Tendency to rely on a few major sources (see note 4). Should be more on the recommendation, analysis aspect of the issue.

Final Grade: A-